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10 Commercial Visitor Services

The National Park Service will provide, through the use of concession contracts, commercial visitor services within parks that are necessary and appropriate for visitor use and enjoyment. Concession operations will be consistent with protection of park resources and values and demonstrate sound environmental management and stewardship.

10.1 GENERAL

Commercial Visitor Services will be authorized as *concession operations* unless they meet the specific criteria for a *commercial use authorization*. This chapter addresses concession management.

10.2 CONCESSIONS

10.2.1 Concession Policies

Concession operations are subject to the provisions of the National Park Service Concessions Management Improvement Act of 1998, National Park Service regulations published at 36 CFR Part 51, this chapter of NPS *Management Policies*, and Director's Order #48A: Concession Management, and other specific guidance that may be issued under the Director's authority.

10.2.2 Commercial Visitor Services Planning

Commercial visitor services planning will identify the appropriate role of commercial operations in helping parks to achieve desired visitor experiences, and will be integrated into other plans and planning processes.

Concession management plans or commercial services plans will support a park's purpose and significance, exceptional resource values, visitor experience objectives, and be consistent with enabling legislation. These plans will also determine whether proposed concession facilities and services are necessary and appropriate and will consider alternatives. Proposed concession operations must be economically feasible and generally supported by a feasibility study prepared by a qualified individual.

10.2.2.1 Preference for Out-of-park Private Enterprise: If adequate commercial facilities are available to serve visitors outside of park boundaries, new facilities will not be developed, nor will existing facilities be expanded within parks. Upon expiration of an exiting contract, or when considering whether to expand or develop facilities and services in a park to meet visitor needs, the superintendent will first consider whether the needs are met by commercial services outside of park boundaries. This will be accomplished as part of the park's planning process.

10.2.2.2 Planning Criteria for Park Concessions: Any concession facilities improvement program or any service authorized in a concession contract will be in conformance with the appropriate approved plan(s) for the area being considered. A decision to authorize a park concession will be based on a determination that the following conditions will be met:

- \$ The facility or service is necessary and appropriate for the public use and enjoyment of the park in which it is located and identified needs are not met outside park boundaries.
- \$ The facility or service will provide for and further the protection, conservation and preservation of the environment, park resources and values and will incorporate sustainable principles and practices into planning, design, siting, construction, building materials, utility systems, recycling of building materials and waste management. Best management practices will be incorporated in all phases of construction activity.
- \$ The use of the facility or service will enhance visitor use and enjoyment of the park without impairing park resources and values.
- \$ The number, location, and sizes of sites assigned for necessary facilities will be the minimum necessary for proper and satisfactory operation of the facilities, emphasizing preservation of aesthetic values and integration of sustainable design concepts.

10.2.2.3 Historic Properties: The use, maintenance, repair, rehabilitation, restoration, or other modification of concession facilities that are listed on or eligible for the National Register of Historic Places are subject to the applicable provisions of all laws, Executive orders, regulations, and policies pertaining to cultural properties. The National Park Service will assist concessioners in understanding and complying with regulations for the "Protection of Historic Properties" (36 CFR Part 800) promulgated by the Advisory Council on Historic Preservation. Historic structures and their contents, and museum objects that are in the control of concessioners will be treated in accordance with the appropriate standards contained in National Park Service guidance documents.

10.2.3 Concession Contracting

Approved standard contract language will be used in all National Park Service concession contracts.

10.2.3.1 Terms and Conditions of Contracts: Concession services will be authorized under concession contracts, unless authorized by law. The term of a concession contract shall generally be 10 years or less. However, the Director may award a contract for a term of up to 20 year if the Director determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term. In this regard, the term of concession contracts should be as short as is prudent, taking into account the financial requirements of the concession contract, resource protection and visitor needs, and other factors the Director may deem appropriate.

10.2.3.2 Modifications: Concession contracts may be modified only by written amendment.

Amendments developed after the issuance of a concession contract must be consistent with current National Park Service policies and orders. Unless otherwise authorized by the contract, a concession contract may be amended to provide additional visitor services only if the services are minor and a reasonable extension of the existing services.

10.2.3.3 Extensions: Concession contracts may be extended only in accordance with the requirements of 36 CFR Part 51, subpart D. The signature authority for contract extensions or amendments must be consistent with delegations of authority from the Director.

10.2.3.4 Competition: In order to obtain the best service provider and maximize benefits to the government, the National Park Service encourages competition in the award of concession contracts. The National Park Service also encourages, through outreach, the participation of American Indian, minority and women-owned businesses when new business activities occur.

10.2.3.5 Third-party Agreements and Sub-concessions: Unless specified in the contract, sub-concession or other third party agreements, including management agreements, for the provision of services required and/or authorized under concession contracts are not permitted. NPS may also advertise for a new concession contract to provide these additional services.

10.2.3.6 Multi-park Contracts: Concessioners operating in more than one park unit must have separate contracts for each park unit. An exception may be made in the case of those park units having common National Park Service management or where service is provided in contiguous park areas (for example, a pack trip that crosses the boundary of two adjoining parks).

10.2.3.7 Termination: The National Park Service may terminate concession contracts for default and in any other circumstances specified in the concession contract.

10.2.4 Concession Operations

10.2.4.1 Service Type and Quality: It is the objective of the National Park Service that every facility or service will be among the best of its type. Where necessary and appropriate, the concession contract will specify a range of facility, accommodation and service types that are to be provided at reasonable rates.

10.2.4.2 Evaluation of Concession Operations: Concession operations will be evaluated to ensure that park visitors are provided with high-quality services and facilities, which are safe and sanitary, and meet National Park Service environmental, health, safety and operational standards. As outlined in the Concessioner Operational Evaluation Program, the evaluation results will provide a basis for NPS management to determine whether to continue or terminate a concession contract, and whether a concessioner is eligible to exercise a right of preference to the award of a qualified new concession contract.

10.2.4.3 Interpretation by Concessioners: Concessioners will be encouraged to train their employees and, through their facilities and services, instill in their guests an appreciation of the park, its purpose and significance, its proper and sustainable management and stewardship of its resources. When required by the contract, concessioners will participate in formal interpretive training, offered by NPS or co-

sponsored by the concessioner. Instilling appreciation of the park can be accomplished in many ways such as: guided activities; the design, architecture and decor of facilities; educational programs, interpretive menu design and food-menu offerings; and involvement in the park's overall interpretive program. Gift shop merchandise and displays are exceptional opportunities to educate the visitors about park history, natural, cultural and historic resources and sustainable environmental management. Concession contracts will require the concessioner to provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals, and objectives of the parks where they operate as reflected in park planning documents, mission statements and/or interpretative prospectus.

10.2.4.4 Merchandise: The National Park Service will approve the nature, type, and quality of merchandise to be offered. Merchandise must be available at a range of prices, and must support, to the extent possible, the interpretive themes identified in a plan known as the park gift-shop mission statement. The concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the park, including, but not limited to, merchandise that reflects the conservation of the park's resources or the park's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance. The plan should also integrate pollution prevention and waste reduction strategies and objectives for merchandise. Theme-related merchandise manufactured or handcrafted in the United States -- particularly in a park's geographic vicinity -- will be emphasized.

The revenue derived from the sale of United States Indian, Alaska Native, Native Samoan, and Native Hawaiian handcrafts shall be exempt from any franchise fee payments. Foreign merchandise is not encouraged, but will not be prohibited.

10.2.4.5 Artifacts and Specimens: Concessioners will not be permitted to sell any merchandise in violation of laws, regulations, or National Park Service policies. Some merchandise may be determined by park management to be locally sensitive or inappropriate for sale, and may, at the discretion of the superintendent, be prohibited for retail sale. The sale of original archeological artifacts and paleontological specimens is prohibited. Replicated historical objects, archeological artifacts, or geological, paleontological, or biological specimens may be sold if they are obvious replicas and clearly labeled. Any historical, geological, or biological merchandise that is approved for sale or exhibit by concessioners must be accompanied by appropriate educational material and a written disclaimer clearly stating that such items were not obtained from inside park boundaries.

10.2.4.6 Rates: The National Park Service must approve rates charged to visitors by concessioners. The reasonableness of a concessioner's rates and charges to the public will, unless otherwise provided in the contract, be judged primarily on the basis of comparison with that current for facilities and services of comparable character under similar conditions. Due consideration will be given to length of season, provision for peak loads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Director.

10.2.4.7 Risk Management Program: Concessioners are responsible for managing all their operations to minimize risk, and to control loss due to accident, illness, or injury. Concession contracts require each concessioner to develop a risk management program, which is approved by the superintendent, and is in accordance with the Occupational Safety and Health Act and the National Park Service Concession Risk

Management Program. To ensure compliance with the Risk Management Program, the Service will include a risk management evaluation as part of its standard operational reviews of concession operations.

10.2.4.8 Natural and Cultural Resource Management Requirements: Concessioners are required to comply with applicable provisions of all laws, regulations, and policies applicable to natural and cultural resource protection.

10.2.4.9 Environmental Program Requirements: Concessioners will be required by contract to meet the following environmental management objectives (hereinafter "Environmental Management Objectives") in the operation of visitor services:

- \$ Compliance with all Applicable Laws pertaining to the protection of human health and the environment.
- \$ Incorporate Best Management Practices (BMPs) in all operations, construction, maintenance acquisition, provision of visitor services, and other activities under the contract.

Concessioners will be required by contract to develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive written Environmental Management Program (EMP) to achieve the stated Environmental Management Objectives. The EMP must be updated at least annually and must be approved by the Director.

The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The scope and complexity of the EMP may vary based on the type, size and number of Concessioner activities, but at a minimum should include the following elements: policy statement, goals and targets, accountability, training requirements and monitoring, measurement and corrective action procedures.

Superintendents are encouraged to require the EMP to be submitted as part of the prospectus package. The National Park Service will review concessioner compliance with the EMP under the contract. The National Park Service will also conduct environmental compliance audits of all commercial visitor services at least every three years in accordance with the Concessions Environmental Audit Program. The concessioner will be responsible for corrective actions identified during the environmental compliance audits.

The National Park Service will assist concessioners in understanding environmental program requirements and will additionally include an environmental management evaluation as part of its annual standard operational reviews of concession operations.

10.2.4.10 Insurance: The National Park Service will establish types and minimum amounts of insurance coverage required of concessioners, in order to: (1) provide reasonable assurance that they have the ability to cover bona fide claims for bodily injury, death, or property damage arising from an action or omission of the operator; (2) protect the government against potential liability for claims based on the negligence of the operators; and (3) enable rapid repair or replacement of essential visitor facilities located on park lands that are damaged or destroyed by fire or other hazards. Concessioners will not be permitted to operate without

liability insurance. Under limited conditions, concessioners may operate without property insurance, as described in Director's Order #48A.

10.2.4.11 Food Service Sanitation Inspections: Concessioners that prepare food (on or off park lands), or serve food on park lands will be subject to inspection for compliance with all applicable requirements of local and state health codes, the U.S. Public Health Service, and the Food and Drug Administration Food Code.

10.2.4.12 Smoking: All NPS concession facilities will be smoke-free. The sale of tobacco products through vending machines is prohibited. Designated smoking areas may be established in employee dorms, recreational areas and other multiple use areas.

10.2.5 Concessions Financial Management

Concession contracts shall provide for payment to the government of a franchise fee or such other monetary consideration as determined by the Secretary, upon consideration of the probable value to the concessioner of the privileges granted by the particular contract involved. Such probable value shall be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate services for visitors at reasonable rates.

10.2.5.1 Operating and Development Costs: The National Park Service will strive to minimize park operating and development costs directly related to concessioner operations, to the greatest extent possible, while obtaining appropriate reimbursements for services provided by the National Park Service.

10.2.5.2 Franchise Fees: The amount of the franchise fee or other monetary consideration paid to the United States for the term of the concession contract shall be specified in the concession contract and may only be modified to reflect extraordinary unanticipated changes from the conditions anticipated as of the effective date of the contract. The Secretary shall include in contracts with a term of more than 5 years a provision that allows reconsideration of the franchise fee at the request of the Secretary or the concessioner in the event of such extraordinary unanticipated changes. Such provision shall provide for binding arbitration in the event that the Secretary and the concessioner are unable to agree upon an adjustment to the franchise fee in these circumstances.

10.2.5.3 Franchise Fee Special Account: All franchise fees (and other monetary consideration) will be deposited into a Department of the Treasury special account. In accordance with the NPS Concessions Management Improvement Act of 1998, twenty percent (20%) will be available to support activities throughout the national park system, and eighty percent (80%) will be available to the park by which it was generated, for visitor services and funding high-priority and urgently necessary resource management programs and operations.

10.2.5.4 Record-keeping System: All concessioners will establish and maintain a system of accounts and record-keeping system that utilize written journals and general ledger accounts to facilitate the preparation of annual concessioner financial reports.

10.2.5.5 Annual Financial Reports: Concessioners will be required to submit an annual financial report that reflects only operations pursuant to the authorization.

10.2.5.6 Donations to the NPS: The National Park Service will not solicit or accept donations or gifts from entities that have, or are seeking to obtain, a contract, lease, or other business from the National Park Service. The NPS will not require any concessioner to donate or make contributions to the Service under any circumstance, including the incorporation of such a requirement in concession contracts. Further guidance on donations is available in Director's Order #21: Donations and Fundraising.

10.2.6 Concession Facilities

10.2.6.1 Design: Concession facilities will be of a size and at a location which the Service determines to be necessary and appropriate for their intended purposes. All concession facilities must comply with applicable federal, state, and local construction codes, and conforms to accessibility requirements set forth in applicable accessibility guidelines. Proposed concession facilities must be in accordance with NPS sustainable design, universal design, and architectural design standards. Concession development or improvement proposals must undergo review for compliance with NEPA and section 106 of NHPA (16 USC 470f), or the applicable Director's Order.

In addition to General Park design requirements, the design process for concession facilities must utilize value analysis to analyze the functions of facilities, processes, systems, equipment, services and supplies. Value analysis must be used for the purpose of achieving the essential functions at the lowest life cycle cost consistent with required performance, reliability, environmental, quality and safety criteria and standards.

10.2.6.2 Accessibility of Commercial Services: Concessioners share the National Park Service's responsibility to provide for access to facilities and services in accordance with applicable law. Applicable laws include, but are not limited to, the following:

- \$ Department of the Interior regulations issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibit discrimination on the basis of disability in programs or activities conducted by federal executive agencies (see 43 CFR Part 17); and
- \$ Provisions of the Architectural Barriers Act of 1968, which require physical access to buildings and facilities for all persons.
- \$ Provisions of the Americans with Disabilities Act of 1990, which provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.
- \$ Provisions of the Americans with Disabilities Act Accessibility Guidelines.

10.2.6.3 Maintenance: Concession contracts will require concessioners to be responsible for all maintenance and repair of facilities, lands, and utility systems assigned for their use in accordance with standards acceptable to the Service. Exceptions will be made only in extraordinary circumstances, as determined by the Director. All concession contracts must include a current maintenance plan as specified in

the concession contract. Maintenance Plans are an exhibit to the concession contract and will be considered an integral part of a concessioner's contractual performance compliance.

Maintenance of historic structures will follow the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

10.2.6.4 Utilities and Services: Utilities include, but are not limited to, electricity, fuel, natural gas, water, disposal of wastewater and solid waste, and communication systems. Concessioners will arrange for their own utilities where required. However, the National Park Service may provide utility services to concessioners on a reimbursable basis. Concessioners will provide assurance that computer and mechanical systems are in order and contingency plans are developed in case of system failure.

10.2.6.5 Closure of Commercial Operations During Government Shutdown: The Anti-Deficiency Act requires federal agencies to suspend all non-essential activities whenever there is a failure to enact an appropriations bill or adopt a continuing resolution. All volunteer programs must cease, and visitors in NPS-owned and -operated overnight accommodations must be asked to leave within 48 hours. All commercial facilities and services will be closed in order to protect the safety of visitors and the integrity of park resources. Exceptions to this policy include concessions that are required for health and safety purposes or protection of the environment, or necessary to support park operations that are deemed essential, such as law enforcement.

Commercial facilities located on through roads (roads or public highways that begin and end outside of a park, plus parkways) and public highways may remain open if doing so does not result in additional costs to the park (for example, the staffing of entrance stations). These commercial facilities may include operations such as service stations, food services, stores, and lodging, or portions of such operations that will not contribute to additional park expenses. The commercial facility in question should have access directly from the road or highway, and not require the reopening of park roads having other destinations.

More specific aspects of closures may be guided by a Service-wide shutdown plan.

10.2.7 Concessioner Employees and Employment Conditions

10.2.7.1 Nondiscrimination: Concessioners will comply with all applicable laws and regulations relating to nondiscrimination in employment and the provision of services to the public.

10.2.7.2 Substance Abuse: In compliance with state and federal regulations condemning substance abuse, the NPS prohibits the unlawful possession, use, or distribution of illicit drugs and alcohol. The Service also prohibits the unlawful manufacture, cultivation, processing, or transportation of illicit drugs. This policy applies to concessioners and their employees, at any facility in any activity taking place on National Park Service lands. Concessioners are required to provide and advise employees about the availability of Employee Assistance Programs addressing substance abuse problems.

10.2.8 National Park Service Employees

10.2.8.1 Accepting Gifts and Reduced Rates from Concessioners: National Park Service

employees may not receive concessioner goods or services at a discount unless it is in connection with official business, is to the government's advantage, and is provided for under the terms of a concession contract. However, employees may accept reduced rates or discounts offered by the concessioner when those same reduced rates or discounts are available to the general public.

National Park Service employees may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a concessioner or other person who conducts operations and activities that are regulated by the Department of the Interior. Employees should consult with their assistant ethics counselor regarding the limited exceptions to the general prohibition on accepting gifts from outside sources.

10.2.8.2 Employment of National Park Service Personnel or Family Members by Concessioners: Federal law prohibits government employees from making recommendations, decisions or approvals, relating to applications, contracts, controversies, or other matters in which the employee or the employee's spouse or minor child has a financial interest. Park employees may not make decisions, approvals, or recommendations related to concession activities when their spouse or dependent child is employed by a park concessioner in that particular park. For example, the spouse or dependent child of the superintendent, assistant superintendent, concession staff, environmental manager, or public health specialists may not be employed by a concessioner in the specific park in which the NPS employee works.

10.2.8.3 NPS Employee Ownership/Investment in Concession Businesses: Department of the Interior policy prohibits employees and their spouses and minor children from acquiring or retaining for commercial purposes any permit, lease, or other rights granted by the Department for conducting commercial services on federal lands. Therefore, no National Park Service permits, contracts, or other rights to conduct commercial services in a park will be issued to National Park Service employees or their spouses and minor children who are owners, partners, corporate officers or general managers of any business seeking such a permit, contract or similar right in federal land managed by the Department of the Interior. Further, to avoid the appearance of partiality and conflicts of interest, and to comply with ethics laws that apply to all federal employees, National Park Service employees may not work on any matter involving a business in which they, their spouse or their minor children have a financial interest.

10.2.8.4 Concession Management Personnel Qualifications: To effectively carry out the concession management program, managers and supervisors will make every effort to ensure that personnel selected for positions meet the essential competencies established for the position being filled. When concession management personnel lack the full complement of essential competencies or require refresher training for their position, managers and supervisors will ensure that those employees are trained and certified competent. All personnel vacancy announcements issued for concession management must include program competencies.

10.3 COMMERCIAL USE AUTHORIZATIONS

(Reserved)